RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—COLOR OF TITLE—WRITTEN INSTRUMENT.—Where the defendant under a parol gift of an entire tract of land, but without any "paper" title, took actual possession of only a part of the tract, but claimed title up to its well-defined boundaries for the statutory period, it was *held*, in an action by the heirs of the donor, that the defendant had acquired title to the whole tract. *Nelson* v. *Johnson* (Ct. of App., Ky., 1920), 226 S. W. 94.

The general rule is that one must claim under "color of title" to acquire title to land by constructive adverse possession. See 18 MICH. L. REV. 693. The decisions are in conflict as to what constitutes "color of title." The majority view requires some sort of written instrument. 2 C. J. 170. See also 7 MICH. L. REV. 251; 18 MICH L. REV. 693. It would seem that the reason for requiring "color of title" is to give some dependable means of determining the extent of the occupant's claim and in a measure to give notice of such claim to the owner. The necessity of a written instrument has been dispensed with under various circumstances. Where the adverse holder has had actual possession of a part of a tract under a state of facts which of themselves, though not adequate to constitute actual possession, show the character and extent of his claim, it has been held that "such facts * * * perform sufficiently the office of color of title." *Bell* v. *Longworth*, 6 Ind. 273; *Hitt* v. *Carr*, 62 Ind. App. 80; *Stanley* v. *Schoolbred*, 25 S. C. 181. Where party claiming adversely entered without "color of title," actually occupied part of a lot with a definite boundary marked upon the land to which he claimed title, it was held he had constructive possession of the whole. *Hodges* v. *Eddy*, 38 Vt. 327; *Lang* v. *Clark*, 85 Vt. 222; *Pratt* v. *Ard*, 63 Kan. 182; *Le Moyne* v. *Neal*, 168 Ky. 292; *Miniard* v. *Napier*, 167 Ky. 208. Under facts similar to those of the principal case, where the party goes into possession of part of a tract with well-defined boundaries under a parol gift or contract of sale of the whole, a number of courts have held that the donor or vendor is charged with notice of the extent of the other party's claim, and that therefore, as between the immediate parties and their privies, no "color of title" is necessary for the doctrine of constructive adverse possession to apply. *Niles* v. *Davis*, 60 Miss. 750; *Davis* v. *Davis*, 68 Miss. 478; *Normant* v. *Eureka Co.*, 98 Ala. 181; *Brown* v. *Norvell*, 96 Ark. 609. But see *Parker* v. *Kelsey*, 82 Ore. 334; *Allen* v. *Mansfield*, 108 Mo. 343. In view of the theory for requiring "color of title," given *supra*, the cases seem correctly decided. That they are considered exceptional, see 2 C. J. 232; 2 A. L. R. 1457.

CARRIERS—LIMITATION OF THE AMOUNT OF LIABILITY.—The consignors delivered to the Pacific Mail Steamship Company, at Yokohama, Japan, on March 10, 1915, 56 cases of goods consigned to their own order at New York, billed through by way of the Southern Pacific Railroad and its connections. Only one rate was given in the bill of lading, and it contained a

clause limiting the amount of liability to $100 per package. Without new billing, it came into the custody of the defendant railroad, and was there lost in a collision. Defendant had filed schedules of rates with the Interstate Commerce Commission, which contained but one rate applicable to the shipment. Plaintiff, successor to consignor in interest, sued for invoice value. Defendant claimed that plaintiff was limited to $100 per package. *Held,* plaintiff may recover invoice value of goods. *Union Pacific Railroad Co.* v. *Burke* (February, 1921), U. S. Supreme Court.

For note on decision in lower court, see 18 MICH. L. REV. 423. For the purpose of the case, it was accepted that the property should be treated as moving eastward from San Francisco under the Uniform Bill of Lading, although the Yokohama bill was the only one issued. The Uniform Bill of Lading provides that the amount of loss shall be the invoice value of the goods, unless a lower value has been represented in writing, agreed upon, or is determined by the tariffs upon which the rate is based. The court held that since no choice of rates was or could have been given under the published schedules, there was no estoppel to limit the plaintiff to the "released" rate (see *Hart* v. *Pennsylvania Rd. Co.,* 112 U. S. 331), although the defendant contended that it was not necessary to the valuation agreement that there should be such a choice of rates offered. Had defendants' filed schedules shown alternative rates for different valuations, since this shipment was still under the Carmack Amendment, plaintiff would have been considered estopped to recover full value. *Kansas City Southern Rd.* v. *Carl,* 227 U. S. 639; *Wells, Fargo & Co.* v. *Neiman-Marcus Co.,* 227 U. S. 477. By the magic invoked by filing the rates a contract would have been made conclusively binding on both shipper and carrier, whether the shipper knows of the rates filed or not. *Boston & Maine Rd.* v. *Hooker,* 233 U. S. 97; *Atchison, Topeka & Santa Fe Rd. Co.* v. *Robinson,* 233 U. S. 173. On the other hand, according to the principal case, if the shipper carefully reads the Uniform Bill of Lading, and knowing that he might possibly make the carrier liable for the invoice value, yet signs a contract limiting recovery to the one value for which a rate has been filed, it would seem that he is not estopped, for the reason that another rate with full liability was not filed. The principal case makes the ground for estoppel the selection of the lower of two rates with limited liability, so that where there is no rate lower than another there can be no estoppel. There are statements to that effect in the cases. In *Cincinnati, New Orleans & Tex. Pac. Rd. Co.* v. *Rankin,* 241 U. S. 319, the court said: "Under our former opinions, the settled doctrine is that where alternate rates, fairly based on valuation, are offered, a railroad may limit its liability by special contract." See *Great Northern Railroad Co.* v. *O'Connor,* 232 U. S. 516; *Wells, Fargo & Co.* v. *Nieman-Marcus Co., supra; Missouri, etc., Ry. Co.* v. *Harriman,* 227 U. S. 657. But the inconsistency shown above is the result of the artificial development of estoppel in these cases. See *Pierce Co.* v. *Wells, Fargo & Co.,* 236 U. S. 278; see 15 COL. L. REV. 399, 475. The principal case is undoubtedly right in holding that limitation of the amount for which carrier is liable is an excep-

tion to the carrier's common law liability, and that the rule governing this exception is not to be extended to apply where no choice of rates is given. The defendant cannot go outside the filed rates, and with no choice offered there is an illegal contract of limitation comparable to that in *Boston & Maine Rd. Co. Co.* v. *Piper,* 246 U. S. 439.

CONSTITUTIONAL LAW—EIGHTEENTH AMENDMENT—DOUBLE JEOPARDY.—Indictments under the National Prohibition Act, in five cases considered together. In two cases there had been convictions under a state statute more stringent than the national law; in the other three there had been convictions under municipal ordinances. *Held,* convictions under the state statute were a bar to indictments under the national law; those under the municipal ordinances were not a bar. *United States* v. *Peterson et al.,* and four other cases (C. C. A., 8th Circ., 1920), 268 Fed. 963.

The convictions under the ordinances were not a bar, since the state had not delegated its concurrent authority to the municipalities; but the convictions under the state statute were held to be a bar because it was not intended that one should be punished both under state and federal law for the same offense. There is some early authority for such a holding; see *Commonwealth* v. *Fuller,* 8 Met. 313; *Cueth* v. *Overby,* 3 Ky. Law 704, where it is said that conviction in one jurisdiction would be a bar to an indictment in another jurisdiction, since it is for the same offense. And in *Harlan* v. *People,* 1 Douglas 207, it was said that it logically follows, from the fact of concurrent power in the states and in the federal government to pass laws punishing counterfeiting, that conviction in either state or federal court is a bar to conviction in the other. But by the great weight of authority a single act may be a violation of the laws of both governments, and conviction or acquittal in the courts of one is no bar to prosecution in the courts of the other. *Cross* v. *North Carolina,* 132 U. S. 132, 139; *U. S.* v. *Barnhart,* 22 Fed. 285; *U. S.* v. *Wells,* 28 Fed. 522; *U. S.* v. *Palan,* 167 Fed. 991; see *Fox* v. *Ohio,* 5 How. 433; *Moore* v. *Illinois,* 14 How. 560; *U. S.* v. *Amy,* 24 Fed. Cas, 792, 810; *Ex parte Siebold,* 100 U. S. 341, 389. In the very nature of things, two sovereignties cannot have jurisdiction over the same *offense,* unless it is one arising under the law common to all, as the law of nations; see *U. S.* v. *Pirates,* 5 Wheat. 197. Neither government should be permitted to hinder the other in the enforcement of its own laws. Otherwise, where the policy of one differs from the policy of the other, one guilty of an offense against one sovereignty might plead in bar a conviction and comparatively light punishment inflicted by the other. *State* v. *Rankin,* 4 Coldwell 145; see *U. S.* v. *Barnhart, supra.* The criminal cannot complain, for he owes allegiance to both governments and is protected by both. See *State* v. *Moore,* 143 Ia. 240, 21 Ann. Cas. 63, with full note on whole subject, page 64. The jurisdiction which first has control over the subject matter of the offense, by comity, should continue to exercise jurisdiction until judgment, thus avoiding embarrassing conflict. *U. S.* v. *Wells, supra; U. S.* v. *Barnhart, supra.* Prior conviction may be taken into consideration